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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re **PATENT** application of

Applicant: **Paul R. Jannot**

Examiner: **Melanie Ruano Tyson**

Serial No.: **10/627364**

Art Unit: **3731**

Filing Date: **07/25/2003**

Title: **SUTURE AND CLAMP RETAINER AND ORGANIZER**

Docket No. **30618**

APPEAL BRIEF

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Sir:

This Brief is being submitted in connection with the appeal of the above-identified patent application.

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29 MAY 2007

I. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Paul R. Jannot, the Applicant.

II. RELATED APPEALS AND INTERFERENCES

Appellant and Appellant's representative are unaware of any prior or pending appeals, interferences, or judicial proceedings, the outcome of which will directly affect, be directly affected by, or have bearing on the Board's decision in this pending appeal.

III. STATUS OF CLAIMS

Claims 1 – 7 are pending in the current application. Claims 1 – 7 stand finally rejected and are the subject of this appeal.

IV. STATUS OF AMENDMENTS

There were no amendments filed subsequent to the Final Office Action dated 11/30/2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a suture and clamp retainer and organizing device 10 or 120 that comprises a body of resilient material 12 (Figs. 1 & 2; DESCRIPTION page 3, lines 1-3), or 114, 116 (Fig. 5; p. 5, ¶3, lines 1 - 4) or 122 (Figs. 7 - 10; page 5, ¶ 4, lines 1 - 5).

Body 12 includes a plurality of lateral slits 18-32 and a pocket 38 - 52 adjacent each slit for receiving and retaining a hemostat 63 attached to a suture 64 (DESCRIPTION page 3, lines 5-7; Figs. 1 & 2) A suture is inserted through a slit and its connected hemostat is inserted into a pocket of the body 12. (from page 3, last line, thru page 4, lines 1 - 3; Figs. 1 – 3)

The pockets 38-52 and 128 retain the hemostats 63 and 130 against being pulled through the body 12 because the taper of bores 50 provides a barrier (page 4, ¶ 2, lines 6 – 8 & ¶ 5, lines 1, 2; Fig. 5) and 122 (page 5, ¶ 4, lines 8 - 9; Figs. 6 - 10).

Means 54-60 or 122 are provided to attach body 12, 114, 116 to a surgical drape 92 or other support surface. (Figs. 1 - 10

During an operation, hemostats and attached sutures are inserted through the slits into the pockets of the device of this invention to organize the sutures and to secure the hemostats against being pulled through the device. The device is pulled to tension the sutures and attached to a surgical drape. The device can be freed to allow the surgeon to manipulate groups of sutures to pull back muscle or other tissue to expose the surgery site. (Figs. 4 and 5; page 1, 4th and 5th paragraphs – bridging onto page 2; page 4, 2nd full paragraph; page 6, 1st full paragraph)

Claim 2 (dependent on claim 1)describes each slit 18 – 32 as opening into a tapered bore or pocket 38 - 52 to retain the hemostat. (Figs. 1 – 3 and 5 – 10; page 3, last 3 lines thru page 4, lines 1, 2 and 3rd ¶, lines 1, 2)

Claim 3 (dependent on claim 3) adds identifying indicia 68 – 82 adjacent each slit. (Figs. 6, 8, 10; page 4, last 3 lines thru page 5, lines 1, 2)

Claim 5 (dependent on claim 1) describes the body a being a flexible elongated strip 122 having pods 124 housing the slits 126 and pockets 128. (Figs. 6 – 10; page 5, last ¶ thru page 6, lines 1 – 4)

Claim 6 (dependent on claim 5) adds beveling 132 to the pod surface. (Figs. 7, 9, 10; page 5, last ¶ thru page 6, lines 1 – 4)

Claim 7 (dependent on claim 1) recites that the body is made of sterilizable material (page 6, last sentence)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. The rejection of claims 1, 4 & 7 under 35 USC § 103(a) as unpatentable over Koseki (Publication No. US 2003/0055039-A1) in view of Lahay (Patent No. 3696920) is presented for review.
2. The rejection of claim 2 under USC § 103(a) as unpatentable over Koseki in view of Lahay, further in view of Gossett (Patent No. 2591805), is presented for review.
3. The rejection of claim 3 as unpatentable over Koseki in view of Lahay, in further view of Gossett, and in further view of Creelman (Patent No. 2692599), is presented for review.
4. The rejection of claims 5 & 6 as unpatentable over Koseki in view of Lahay, in further view of Gossett, and in further view of Gabbay et al (Patent No. 4185636), is presented for review.

VII. ARGUMENT

1. **The rejection of claims 1, 4 & 7 under 35 USC § 103(a) as unpatentable over Koseki (Publication No. US 2003/0055039-A1) in view of Lahay (Patent No. 3696920)**

Lahay discloses a device for firmly holding surgical suction instruments and tubes in a sterile zone *"in an organized configuration, conveniently maintained within the sterile field...."* location ready for use. (see Lahay, column 1, lines 11 – 35). It is designed to hold surgical instruments when not in use. There is no barrier or other means (other than friction) resisting pulling the instruments end-wise out of their slots.

Koseki discloses a device for retaining sutures that are purposely unattached to forceps, with very little tension. *"Also, when fixing an end of a thread with forceps, the weight of the forceps...pulls the stitched tissue. Some tension on thread is required to prevent each thread from mixing with each other, but as the stitched part is often a...frail tissue, there are possibilities for the stitched tissue to be torn from the thread tension."* (Koseki, ¶ [0006], lines 3 – 7). Attaching any weight to the sutures would be detrimental to the procedure.

Lahay provides a device for organizing sutures that are not attached to forceps, hemostats or any other instruments. Koseki provides a device for holding surgical instruments firmly when not in use.

The **surgical problems** confronting Applicant are set forth in his application in the paragraph bridging pages 1 and 2:

"During these surgical procedures, sutures are attached to the damaged or cut ends of muscles, tendons and nerves, hemostats are attached to the sutures and the surgeon grasps a handful of the hemostats to remove this material and open up the surgical site. During the procedure, the joint is manipulated, which can cause these sutures to become tangled and must be untangled to accurately balance the soft tissue. After the surgery is complete, the hemostats are again manually grasped to pull the ends together to balance the soft tissue; then these cut ends are reattached. "

Applicant's solution, in the form of his invention as recited in the 2nd and 3rd paragraphs of Specification page 4, is:

“The hemostats are then inserted into through bores..., where they are securely gripped by the resilient material and held”. “As can be seen, hemostat 63 cannot be pulled through bore 50 because of its taper.” The **sutures are pulled tight to fully expose the surgery site by grasping holder 10 and pulling on it.** In this manner, **the surgeon is relieved of the necessity of untangling the sutures and grabbing a handful of hemostats** to open the site or balance the tissue. Thus holder 10 both holds the hemostats and organizes the sutures to speed the surgical procedure and simplifying this aspect of the procedure for the surgeon.

This device invented to provide a solution is recited in Applicant's independent 1 (and dependent claims 4 and 7): **“A suture clamp...retainer and organizer device...for use during a surgical procedure ...having... pocket means for receiving and retaining a hemostat attached to a suture against being pulled through the body....”**

In Lahay, the instruments are merely gripped, not “retained against being pulled through. Why? Because he has no need to do so, since his device is merely for holding instruments when not in use.

In Koseki, there is no provision for retaining a hemostat. Why? Because to do so would defeat the purpose of his invention – merely organizing sutures. He cautions against putting too much tension on the sutures so as to not tear fragile, diseased tissue.

So, what does a combination of these references disclose, teach or suggest? Nothing relevant to Applicant's invention, as disclosed and as claimed in claim 1, which is used to enable the surgeon to tension and move an organized group of sutures attached to tendons and muscle (soft) tissue **by retaining the hemostats against being pulled through the pockets in the device.**

Accordingly, this ground of rejection of claims 1, 4 and 7 should be reversed.

2. The rejection of claim 2 under USC § 103(a) as unpatentable over Koseki in view of Lahay, further in view of Gossett (Patent No. 2591805)

The argument above relative to the base combination of Koseki and Lahay applies equally here. The addition of Gossett adds nothing relevant to Applicant's invention. Gossett discloses a screwdriver holder, which does not appear to provide a barrier to pulling a screwdriver endwise out of the holder (turn screwdriver 90° from Fig. 1 and pull down), since it is held only by friction there is no barrier. Besides, it is inapposite to a surgical environment.

Accordingly, this ground of rejection of claim 2 should be reversed.

3. The rejection of claim 3 as unpatentable over Koseki in view of Lahay, in further view of Gossett, and in further view of Creelman (Patent No. 2692599)

The argument above relative to the base combination of Koseki and Lahay applies equally here. The addition of Creelman adds nothing to this combination beyond showing indicia adjacent a suture holding slit.

Accordingly, this ground of rejection of claim 3 should be reversed.

4. The rejection of claims 5 & 6 as unpatentable over Koseki in view of Lahay, in further view of Gossett, and in further view of Gabbay et al (Patent No. 4185636)

The argument above relative to the base combination of Koseki and Lahay applies equally here. Gabbay merely shows a commercially available device noted in Applicant's specification (BACKGROUND, ¶ 1). There is no provision for retaining hemostats attached to sutures in the device. Instead, Gabbay holds each suture directly in the device. This may work for heart operations, but Applicant's device was designed for different abilities during surgery, as noted above

VIII. CLAIMS APPENDIX

1. A suture clamp and/or suture retainer and organizer device for use during a surgical procedure, comprising an elongated body formed of resilient material and having a plurality of lateral slits through one surface thereof, said slits being sized to receive and grip a surgical suture, pocket means adjacent each slit for receiving and retaining a hemostat attached to a suture against being pulled through the body, and attachment means for facilitating attachment of the body to a surgical drape or other supportive surface.

2. The device of claim 1, wherein the pocket means adjacent each slit comprise a tapered pocket extending into the body to retain a hemostat in the pocket but prevent the hemostat from being pulled through the body.

3. The device of claim 2, including unique indicia means located in the body adjacent each slit and through passage for identifying each such slit and lateral passage, said indicia means being alpha-numeric or colored marks.

4. The device of claim 1, wherein the body has an elongated cruciform shape, and a semi-cylindrical cross-section.

5. The device of claim 1, wherein the body comprises a flexible elongated base having a plurality of spaced pods mounted thereon, with a slit and adjacent pocket being located in each pod.

6. The suture organizer of claim 5, wherein the pods are beveled on the surface to facilitate movement of sutures into the slits, and the slits are narrower than the thickness of a suture.

7. The device of claim 1, wherein the body is made of a sterilizable material.

CLAIMS

Claims 1, 4 and 7 were rejected under 35 USC §103 over the combination of Koseki and Lahay. Claim 1 has been amended to better distinguish Applicant's invention from this combination by now reciting ***"pocket means adjacent each slit for receiving and retaining a hemostat attached to a suture against being pulled through the body."***

While Lahay discloses a device for holding surgical instruments and Koseki discloses a device for retaining sutures, the combination does not disclose a device having a plurality of slits or slots for holding hemostats having attached sutures. Further, there is no provision for preventing the hemostats from being pulled through the retaining slots, as now recited in claim 1. This retention is necessary where the device is picked up by the surgeon to "simplify and facilitate uniform movement of sutures attached to soft tissue for retraction and/or balancing of the soft tissue during orthopaedic surgeries..." (specification, page 6) This feature is nowhere disclosed, taught or suggested by any combination of the cited references.

Claim 2 were rejected under 35 USC §103 on the base combination plus Gossett. Gossett is inapposite in that it has no relevance to the surgical implements of Applicant's invention or the remainder of the cited references. It is not seen how Gossett has any utility for holding hemostats against being pulled through the slits.

Claim 3 was rejected under 35 USC §103 on the base combination and Creelman, which has no relevance to retaining hemostats from being pulled through.

Claims 5 and 7 were rejected under 35 USC §103 on the base combination plus Gabbay, which has no relevance to holding hemostats.

None of the combinations of references cited teaches, discloses or suggests Applicants as recited in amended claims 1 – 7, allowance of which is requested.

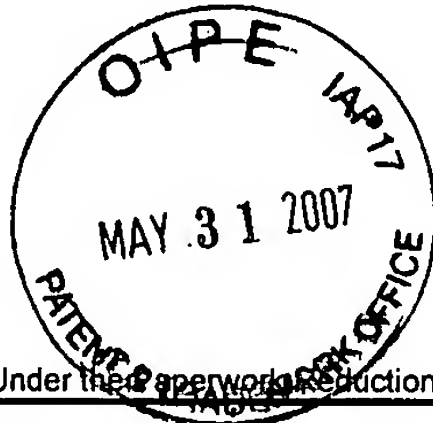
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IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS INDEX

NONE



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